

BILLING CODE: 4410-02P

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT COUNCIL

28 CFR Part 906

[NCPCC 107]

Outsourcing of Noncriminal Justice Administrative Functions

AGENCY: National Crime Prevention and Privacy Compact Council.

ACTION: Proposed Rule.

SUMMARY: The Compact Council, established pursuant to the National Crime Prevention and Privacy Compact (Compact), is publishing a proposed rule to permit the outsourcing of noncriminal justice administrative functions involving access to criminal history record information (CHRI). Procedures established to permit outsourcing are required to conform with the Council's interpretation of Articles IV and V of the Compact.

DATE: Submit comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Send all written comments concerning this proposed rule to the Compact Council Office, 1000 Custer Hollow Road, Module C3, Clarksburg, WV 26306; Attention: Todd C. Commodore. Comments may also be submitted by fax at (304) 625-5388 or by electronic mail at tcommodo@leo.gov. To ensure proper handling, please reference "Noncriminal Justice Outsourcing Docket No. 107" on your correspondence. You may view an electronic version of this proposed rule at www.regulations.gov. You may also comment via electronic mail at tcommodo@leo.gov or by using the www.regulations.gov comment form for this regulation. When submitting comments electronically you must include NCPCC Docket No. 107 in the subject box.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Uzzell, Compact Council Chairman, Florida Department of Law Enforcement, 2331 Philips Road, Tallahassee, Florida 32308-5333, telephone number (850) 410-7100.

SUPPLEMENTARY INFORMATION: The National Crime Prevention and Privacy Compact (Compact), 42 U.S.C. 14616, establishes uniform standards and processes for the interstate and Federal-State exchange of criminal history records for noncriminal justice purposes. The Compact was approved by the Congress on October 9, 1998, (Pub.L. 105-251) and became effective on April 28, 1999, when ratified by the second state. Article VI of the Compact provides for a Compact Council that has the authority to promulgate rules and procedures governing the use of the Interstate Identification Index (III) System for noncriminal justice purposes. This proposed rule will permit a third party to perform noncriminal justice administrative functions relating to the processing of CHRI maintained in the III System, subject to appropriate controls, when acting as an agent for a governmental agency or other authorized recipient of CHRI.

The rulemaking process established by the Council provides an opportunity for comments through the publishing of a proposed rule. Accordingly, interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. In addition to this opportunity for comments, the foundation for the concept, merits and wisdom as outlined in this proposed rule has been debated at meetings open to the public. Further, prior public notice is given in the Federal Register of each Council meeting, including the matters to be addressed at the meeting. Therefore, there is public opportunity to comment on the merits of proposed rules.

In recent years, government and other statutorily authorized entities seeking improved efficiency and economy have become increasingly interested in permitting third party support services for noncriminal justice administrative functions. This is due in large part to the escalating demand for fingerprint-based risk assessments for authorized licensing, employment and national security purposes over the last several

years. The escalating numbers of noncriminal justice fingerprint submissions has resulted in increased workloads for local, state, and federal government entities. Coincidentally, under OMB Circular No. A-76, the federal government is encouraged wherever feasible to use private sector services.

The Compact requires the FBI and each Party State to comply with III System rules, procedures, and standards duly established by the Council concerning record dissemination and use, system security, and privacy protection. In that regard, the Compact specifies that any record obtained may be used only for the official purposes for which the record was requested. The Compact Council does not believe that the use of private contractors to perform noncriminal justice administrative functions requiring access to CHRI is prohibited provided there are appropriate controls expressly preserving the sole official purpose of the record request. With appropriate standards and requirements, the benefits of outsourcing may be attained without degradation to the security of the national III System of criminal records. For example, under the proposed rule, subject to some exceptions, contracting agencies or organizations shall not be permitted to have direct access to the III System by computer terminal or other automated means which would enable them to initiate record requests. Further, the proposed rule provides that tasks necessary to perform noncriminal justice administrative functions would be monitored to assure the integrity and security of such records. Under the proposed rule, safeguards would be required to ensure that private contractors may not access, modify, use, or disseminate such data in any manner not expressly authorized by a government agency or a statutorily authorized recipient of CHRI. Such procedures would establish conditions on the use of the CHRI and would limit dissemination of the CHRI to ensure that such CHRI is used only for authorized purposes. Such procedures would also provide for accurate and current data distribution and require proper maintenance and handling, including the removal and destruction of obsolete or

erroneous information that has been brought to its attention. These conditions are necessary to ensure the confidentiality of such information.

Further, this proposed rule seeks to permit outsourcing of noncriminal justice administrative functions authorized under Articles IV and V of the Compact. Article IV provides generally for authorized record disclosure; Article V provides record request procedures as related to noncriminal justice criminal history record checks pursuant to the Compact. This proposed rule outlines the basic structured framework for minimum standards to ensure that outsourced contracts satisfy the security and privacy required by the Compact Council when criminal history record checks of the III are conducted for noncriminal justice purposes. The contracting parties are not at liberty to supercede these minimum standards with lesser standards; however, contracting parties are free to adopt more stringent standards than required by this regulation.

Administrative Procedures and Executive Orders

Administrative Procedures Act

This rule is published by the Compact Council as authorized by the National Crime Prevention and Privacy Compact (Compact), an interstate and Federal-State compact which was approved and enacted into law by Congress pursuant to Pub. L. 105-251. The Compact Council is composed of 15 members (with 11 state and local governmental representatives). The Compact specifically provides that the Council shall prescribe rules and procedures for the effective and proper use of the III System for noncriminal justice purposes, and mandates that such rules, procedures, or standards established by the Council be published in the Federal Register. See 42 U.S.C. 14616, Articles II(4), VI(a)(1) and VI(e). This publication complies with those requirements.

Executive Order 12866

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 12866 is not applicable.

Executive Order 13132

The Compact Council is not an executive department or independent regulatory agency as defined in 44 U.S.C. 3502; accordingly, Executive Order 13132 is not applicable. Nonetheless, this rule fully complies with the intent that the national government should be deferential to the States when taking action that affects the policymaking discretion of the States.

Executive Order 12988

The Compact Council is not an executive agency or independent establishment as defined in 5 U.S.C. 105; accordingly, Executive Order 12988 is not applicable.

Unfunded Mandates Reform Act

Approximately 75 percent of the Compact Council members are representatives of state and local governments; accordingly, rules prescribed by the Compact Council are not Federal mandates. Accordingly, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

The Small Business Regulatory Enforcement Fairness Act (Title 5, U.S.C. 801-804) is not applicable to the Council's rule because the Compact Council is not a "Federal agency" as defined by 5 U.S.C. 804(1). Likewise, the reporting requirement of the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act) does not apply. See 5 U.S.C. 804.

List of Subjects in 28 CFR Part 906

Administrative practice and procedure, Intergovernmental relations, Law Enforcement, Privacy.

Accordingly, chapter IX of title 28 Code of Federal Regulations is amended by adding part 906 to read as follows:

PART 906 - OUTSOURCING OF NONCRIMINAL JUSTICE ADMINISTRATIVE FUNCTIONS

Sec.

906.1 Purpose and authority.

906.2 Third Party Handling of Criminal History Record Information.

Authority: 42 U.S.C. 14616

§ 906.1 Purpose and authority.

The purpose of this part 906 is to establish rules and procedures for third parties to perform noncriminal justice administrative functions involving access to Interstate Identification Index (III) information. The Compact Council is establishing this rule pursuant to the National Crime Prevention and Privacy Compact (Compact), title 42, U.S.C., chapter 140, subchapter II, section 14616. The scope of this rule is limited to noncriminal justice background checks in so far as they are governed by the provisions of the Compact as set forth in 42 U.S.C. sections 14614 and 14616.

§ 906.2 Third Party Handling of Criminal History Record Information

_____(a) Except as prohibited in paragraph (b), criminal history record information obtained from the III System for noncriminal justice purposes may be made available: (1) To a governmental agency pursuant to a federal statute, federal executive order or a state statute that has been approved by the United States Attorney General; and

(2) To a private contractor, or other nongovernmental entity or organization, pursuant to a contractual agreement under which the entity or organization performs activities or functions for a governmental agency authorized to obtain criminal history record information as identified in paragraph (a)(1) or for a nongovernmental entity authorized to obtain such information by federal statute or executive order.

(b) Criminal history record information provided in response to fingerprint-based III System record requests initiated by authorized governmental agencies or nongovernmental entities for noncriminal justice purposes may be made available to

contracting agencies or organizations manually or electronically for such authorized purposes. Such contractors, agencies, or organizations shall not be permitted to have direct access to the III System by computer terminal or other automated means which would enable them to initiate record requests, provided however, the foregoing restriction shall not apply with respect to (1) persons, agencies, or organizations that may enter into contracts with the FBI or State criminal history record repositories for the performance of authorized functions requiring direct access to criminal history record information; and (2) any direct access to records 42 U.S.C. § 14614(b).

(c) The contracts or agreements authorized by paragraphs (a)(1) and (a)(2) shall specifically describe the purposes for which criminal history record information may be made available to the contractor and shall incorporate by reference a security and management control outsourcing standard approved by the Compact Council after consultation with the United States Attorney General. The security and management control outsourcing standard shall specifically authorize access to criminal history record information; limit the use of the information to the purposes for which it is provided; prohibit retention and/or dissemination of the information except as specifically authorized in the security and management control outsourcing standard; ensure the security and confidentiality of the information; provide for audits and sanctions; provide conditions for termination of the contractual agreement; and contain such other provisions as the Compact Council, after consultation with the United States Attorney General, may require.

(d) The exchange of criminal history record information with an authorized governmental or nongovernmental entity or contractor pursuant to this part is subject to cancellation for use, retention or dissemination of the information in violation of federal statute, regulation or executive order, or rule, procedure or standard established by the Compact Council in consultation with the United States Attorney General.

Dated: _____

Donna M. Uzzell

Compact Council Chairman